THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 28160 of 2005

Order:

The main grievance of the petitioner in this writ petition is that he worked as Casual Mazdoor in the respondent-BSNL for the period from 01.02.1986 to 01.03.1989, from May 1991 to February 1992 for a period of 270 days, and from 12.07.2001 to 31.10.2003, but the respondent-BSNL, without issuing any notice and without following the procedure contemplated under the Statute, orally directed him not to attend the work from 01.11.2003, and in spite of submitting several representations requesting the respondent-BSNL to re-engage him as Casual Mazdoor, they have not considered the same. Hence, he filed the present writ petition seeking to direct the respondent-BSNL to consider his case for re-engagement as Casual Mazdoor.

A counter affidavit is filed by the respondent-BSNL denying the allegations of the petitioner that he worked as Casual Mazdoor from 01.02.1986 to 01.03.1989 and from 01.05.1991 to 28.02.1992 for a period of 270 days, and *inter alia* stating that the petitioner was earlier engaged as casual labour for the period from 01.05.2002 to 31.07.2003 (except April, May and June 2003) for the works of contingent nature including repairs, which restricted to 100 days in a year, and he was paid wages on pro-rata basis for that period. It is further stated that in view of the ban imposed on the engagement of casual labour by the Department, the request of the petitioner to re-engage him as Casual Labour cannot be considered.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-BSNL.

Though the petitioner claims that he worked as Casual Mazdoor in the respondent-BSNL for the period from 01.02.1986 to 01.03.1989, from May 1991 to February 1992 for a period of 270 days, and from 12.07.2001 to 31.10.2003, the same is denied by the respondent-BSNL stating that the petitioner was engaged as casual labour for the period from 01.05.2002 to 31.07.2003 (except April, May and June 2003) for the works of contingent nature including repairs, which restricted to 100 days in a year. Since the petitioner has already been dis-engaged from service, no direction can be given to the respondents re-engage him into service.

Be that as it may, whether the petitioner had worked as Casual Mazdoor in the respondent-BSNL continuously for a period of 270 days or not, whether there is any relationship of employer and employee between the respondent-BSNL, and whether there is any ban on engagement of casual, are all disputed questions of fact, which cannot be decided in a proceeding under Article 226 of the Constitution of India, for they require adducing of evidence by the parties, and the remedy of the petitioner, if any, is to approach the appropriate forum under the Industrial Disputes Act, 1947 and seek appropriate reliefs.

The writ petition is therefore dismissed. The petitioner, however, is at liberty to approach the appropriate forum under the Industrial Disputes Act, 1947, for appropriate reliefs. No costs.

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N.V. RAMANA, J.

Date: 26th December, 2007.
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